

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JUAN RIVERA,	)	CASE NO. 3: 15 CV 1389
	)	
Petitioner,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	<u>ORDER ADOPTING</u>
	)	<u>MAGISTRATE'S REPORT AND</u>
	)	<u>RECOMMENDATION</u>
JASON BUNTING,	)	
Warden,	)	
	)	
Respondent.	)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Kenneth S. McHargh. The Report and Recommendation (ECF # 10), issued on November 2, 2015, is hereby ADOPTED by this Court. Petitioner filed this action requesting a writ of habeus corpus pursuant to 28 U.S.C. §2254, challenging the constitutionality of his 2005 conviction of two counts of rape and two counts of gross sexual imposition. At issue before Magistrate McHargh in this instance was Petitioner's Motion for Summary Judgment/Nihil Dicit or Default Judgment. (ECF #6) Petitioner's motion for default judgment is based upon Petitioner's belief that the Defendant's Return of Writ was past due. The Magistrate Judge recommends that the Petitioner's Motion for Summary Judgment/Default Judgment be denied because Respondent's Return of Writ was not past due and Respondent was not in default. The Petitioner has not filed any objections to the Report and Recommendation.

The Court has reviewed de novo the Report and Recommendation, see *Ohio Citizen Action v. City of Seven Hills*, 35 F. Supp. 2d 575, 577 (N.D. Ohio 1999), and ADOPTS it in its

entirety. Petitioner's Motion for Summary Judgment/Default Judgment (ECF # 6) is denied.

IT IS SO ORDERED.

/s/Donald C. Nugent  
DONALD C. NU GENT  
United States District Judge

DATED: December 21, 2015